of detention. It seems to me that that would be a very disastrous consequence. Consequently, it is necessary, in view of the fact that it is quite impossible for Parliament immediately or before the 26th of January to meet and to pass a law which will take effect from that date, to empower some authority under the Constitution to do the work which Parliament is expected to do in order to give full effect to the provisions of article 22. Who is such an authority under the Constitution ? Obviously the President. The President is the only authority who will be in existence on or before the 26th of January and who could expeditiously make a law stepping into the shoes of Parliament and giving effect to the provisions of a article 22 permitting a longer period of detention. It is, therefore, absolutely essential to provide for a break-down of the law relating to preventive detention, to have an article such as 373 empowering the President to enact a law which is within the power of Parliament to enact. Sir, I should further like to add that there is nothing very novel in the provisions contained in article 373, because we have given power by other articles to the President to adapt existing laws in order that they may be brought in conformity with the provisions of the Constitution. Such modification can only be made by Parliament, but we also realise that it would not be possible for Parliament immediately on the 26th of' January to adapt so many voluminous laws enacted by the Indian Legislature to bring them in conformity with the Constitution. That power has, therefore, been given to the President. Similarly, by another article we have given to the President the power to amend temporarily this very Constitution for the purpose of removing difficulties. I, therefore, submit that there is nothing novel, there is nothing sinister in this article 373. On the other hand, it is a very necessry complementary article to prevent the breakdown of any law relating to preventive detention.

Now, Sir, I come to article 34 which relates to martial law. This article, too, has been subjected to some strong criticism. I am sorry to say that Members who spoke aganist article 34 did not quite realise what article 20, clause (1) and article 21 of the Constitution propose to do. Sir, I would like to read article 20, clause (a) and also article 21, because without a proper realisation of the provisions contained in these two articles it would not be possible for any Member to realise the desirability of—I would even go further and say the necessity for—article 34. Article 20, clause (1) says :

"No person shall be convicted of any except offence for violation of a law in force at the time of the commission of the act charged as an offence."

Article 21 says :

"No person shall be deprived of his life or personal liberty except according to procedure established by law."

Now, it is obvious that when there is a riot, insurrection or rebellion, or the overthrow of the authority of the State in any particular territory martial law is introduced. The officer in charge of martial law does two things. He declares by his order that certain acts shall be offences against his authority, and, secondly, he prescribes his own procedure for the trial of persons who offend against the acts notified by him as offence, is quite clear that any act notified by the military commander in charge of the disturbed area is not an offence enacted by law in force, because the Commander of the area is not a law-making person. He has no authority to declare that a certain act is an offence, and socondly the violation of any order made by him would not be an offence within the meaning of the phrase "law in force", because "law in force" can only mean law made by a law-making authority. Moreover, the procedure that the Commander-in-Chief or the military commander presrcibes is also not procedure according to law, because he is not entitled to make a law. These are orders which he has

made for the purpose of carrying out his functions, namely, of restoring law and order. Obviously, if article 20 clause (1) and article 21 remain as they are,. without any such qualification as is mentioned in article 34, martial law would be impossible in the country, and it would be impossible for the State to restore order quickly in an area which has become rebellious.

It is therefore necessary to make a positive statement or positive provisions to permit that notwithstanding anything contained in article 20 or article 21, any act proclaimed by the Commander-in-Chief as an offence against his order shall be an offence. Similarly, the procedure prescribed by him shall be procedure deemed to be established by law. I hope it will be clear that if article 34 was not in our Constitution, the administration of martial law would be quite impossible and the restoration of peace may become one of the impossibilities of the situation. I therefore submit, Sir, that article 34 is a very necessary article in order to mitigate the severity of articles 20(1) and 21.

Shri H. V. Kamath : May I ask why the indemnification of persons other than public servants is visualised in this article ?

The Honourable Dr. B. R. Ambedkar : Because my friend probably knows if he is a layer.....

Shri H. V. Kamath : I am not.

The Honourable Dr. B. R. Ambedkar : . . . . That when martial law is there it is not merely the duty of the Commander-in- Chief to punish people, it is the duty of every individual citizen of the State to take the responsibility on his own shoulder and come to the help of the Commander-in-Chief. Consequently if it was found that any person who was an ordinary citizen and did not belong to the Commander-in- Chief's entourage, so to say, does any act it is absolutely essential that he also ought to be indemnified because whatever act he does he does it in the maintenance of the peace of the State and there is a no reason why a distinction should be made for a military officer and a civilian who comes to the rescue of the State to establish peace.

Now, Sir, I come to article 48 which relates to cow slaughter. I Deed not say anything about it because the Drafting Committee has put in an agreed amendment which is No. 549 in List IV. I hope that that would satisfy those who were rather dissatisfied with the new draft of article 48 as proposed by the Drafting Committee.

Then I come to article 77 which deals with rules of business. In the course of the debate on this article, some Members could not understand why this article was at all necessary. Some Members said that if at all this article was necessary the authority to make rules of business should be vested in the Prime Minister. Others said that if this article was at all necessary it was necessary for the purpose of the efficient transaction of business and consequently the word "efficient" ought to be introduced in this clause. Now, Sir, I am sorry to say that not many Members who participated in the debate on article 77 have understood the fundamental basis of this article. With regard to the point that the authority to make rules of business should be vested in the Prime Minister, I think it has not been understood properly that in effect that will be so for the simple reason that although the article speaks of the President, the President is also bound to accept the advice of the Prime Minister. Consequently, the rules that will be issued by the President under article 77 will in fact be issued by the Prime Minister and on his advice.

Now, Sir, in order to understand the exact necessity of article 77, the first thing which is necessary to realise is that article 77 is closely related to article 53. In fact, article 77 merely follows on to article 53. Article 53 makes a very necessary provision. According to the general provisions of the Constitution all executive authority of the Union is to be exercised by the President. It might be contended that, under that general provision, that the executive authority of the Union is to be exercised by the President, such authority as the President is authorised and permitted to exercise shall be exercised by him personally. In order to negative any such contention, article 53 was introduced which specifically says that the executive authority of the Union may be exercised by the President either directly or indirectly through others. In other words, article 53 permits delegation by the President to others to carry out the authority which is vested in him by the Constitution. Now, Sir, this specific provision contained in article 53 permitting the President to exercise his authority through others and not by himself must also be given effect to. Otherwise article 53 will be nugatory. The question may arise as to why it is necessary to make a statutory provision as is proposed to be done in article 77 requiring the President to make rules of business. Why not leave it to the President to do so or not to do so as he likes ? The necessity for making a statutory provision in terms of article 77 is therefore necessary to be explained.

There are two things which must be borne in mind in criticising article 77. The first is that if the President wants to delegate his authority to some other officer or some other authority, there must be some evidence that he has made the delegation. It is not possible for persons who may have to raise such a question in a court of law to prove that the President has delegated the authority. Secondly, if the President by his delegation proposes to give authority to any particular individual to act in his name or in the name of the Government, then also that particular person or that particular officer must be specifically defined. Otherwise a large litigation may arise in a court of law in which the questions as to the delegation by President, the question as to the authority of any particular individual exercising the powers vested in the Union President may become matters of litigation. Those who have been familiar with litigation in our courts will remember that famous case of Shibnath Banerjee *vs*. Government of Bengal. Under the Defence of India Act, the Governor had made certain rules authorising certain persons to arrest certain individuals who committed offences against the Defence of India Act. The question was raised as to whether the particular individual who ordered the arrest under that particular law had the authority to act and in order to satisfy itself the Calcutta High Court called upon the Government of Bengal to prove to its satisfaction that the particular individual who was authorised to arrest was the individual meant by the Government of Bengal. The Government of Bengal had to produce its rules of business for the inspection of the Court before the Court was satisfied that the person who exercised the authority was the person meant by the rules of business.

It is in order to avoid this kind of litigation as to delegation of authority for acts that we thought it was necessary to introduce a provision like article 77. This article of course does not take away the power of the Parliament to make a law permitting other persons to have delegated authority as to permit them to act in the name of the Government of India. But while Parliament does make such a provision it is necessary that the President shall so act as to avoid any kind of litigation that may arise otherwise.

With regard to article 100 which relates to the question of quorum I do not know whether it is necessary for me to say anything in reply. All that I would say is that there is a fear having regard to the comparative figures

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relating to quorum prescribed in other legislative bodies in other countries that the quorum originally fixed was probably too high and we therefore suggested that the quorum should be reduced. The Drafting Committee's proposal is not an absolute proposal, because it is made subject to law made by Parliament. If Parliament after a certain amount of experience as to quorum comes to the conclusion that it is possible to carry on the business of Parliament with a higher quorum there is nothing to prevent Parliament from altering this provision as contained in article 100. The provision therefore is very elastic and permits the existing situation to be taken into account and permits also the future experience to become the guide of Parliament in altering the provision.

Something was said with regard to article 128. It was contended that we ought not to pamper our judges too much. All that I would say is that the question with regard to the salaries of judges is not now subject to scrutiny. The House has already passed a certain scale of salary for existing judges and a certain scale of salary for future judges. The only question that we are called upon to consider is when a person is appointed as a judge of a High Court of a particular State, should it be permissible for the Government to transfer him from that Court to a High Court in any other State? If so, should this transfer be accompanied by some kind of pecuniary allowance which would compensate him for the monetary loss that he might have to sustain by reason of the transfer? The Drafting Committee felt that since all the High Courts so far as the appointment of judges is concerned form now a central subject, it was desirable to treat all the judges of the High Courts throughout India as forming one single cadre like the I.C.S. and that they should be liable to be transferred from one High Court to another. If such power was not reserved to the Centre the administration of justice might become a very difficult matter. It might be necessary that one judge may be transferred from one High Court to another in order to strengthen the High Court elsewhere by importing better talent which may not be locally available. Secondly, it might be desirable to import a new Chief Justice to a High Court because it might be desirable to have a man who is unaffected by local politics and local jealousies. We thought therefore that the power to transfer should be placed in the hands of the Central Government.

We also took into account the fact that this power of transfer of judges from one High Court to another may be abused. A Provincial Government might like to transfer a particular judge from its High Court because that judge had become very inconvenient to the Provincial Government by the particular attitude that he had taken with regard to certain judicial matters, or that he had made a nuisance of himself by giving decisions which the Provincial Government did not like. We have taken care that in effecting these transfers no such considerations ought to prevail. Transfers ought to take place only on the ground of convenience of the general administration. Consequently, we have introduced a provision that such transfers shall take place in consultation with the Chief Justice of India who can be trusted to advise the Government in a manner which is not affected by local or personal prejudices.

The only question, therefore, that remained was whether such transfer should be made so obligatory as not to involve any provision for compensation for loss incurred. We felt that that would be a severe hardship. A judge is generally appointed to the High Court from the local bar. He may have a household there. He may have a house and other things in which he will be personally interested and which form his belongings. If he is transferred

from one High Court to another obviously he cannot transfer all his household. He will have to maintain a household in the original Province in which he worked and he will have to establish a new household in the new Province to which he is transferred. The Drafting Committee felt therefore justified in making provision that where such transfer is made it would be permissible for Parliament to allow a personal allowance to be given to a judge so transferred. I contend that there is nothing wrong in the amendment proposed by the Drafting Committee.

With regard to article 148 I need say nothing at this stage for the simple reason that the amendment moved by my friend Mr. T. T. Krishnamachari (No. 618) is one which has found itself agreeable to all those who had taken interest in this particular article.

Similarly article 320, over which there was so much controversy (if I may say so, without offence, utterly futile controversy) all controversy has now been set at rest by the revised amendment No. 558, which removes the objectionable parts which Members at one stage did not like.

With regard to article 365 there has been already considerable amount of debate and discussion. I also participated in that debate and stated my point of view. I am sure that after taking all that I said into consideration Members will find that article 365 is a necessary article and does not in any sense override the decisions taken by the House at an earlier stage.

I come to article 378. It was contended that this article should contain a provision of a uniform character for determining the population for election purposes. I am sorry to say that I am not in a position to accept this proposal of a uniform rule. It is quite impossible to have a uniform rule in the changing circumstances of the different Provinces. The Centre therefore must retain to itself the liberty to apply different tests to different Provinces for the purpose of determining the population. If any grave departure is made by reason of applying different rules to different Provinces, the matter is still open for the future Parliament to determine, because all matters which have relevance to constituencies will undoubtedly be placed before the Parliament and Parliament will then be in a position to see for itself whether the population as ascertained by the Central Government is proper, or below or above. Now, Sir, I come to article 391.

Pandit Balkrishna Sharma : Article 379?

The Honourable Dr. B.R. Ambedkar : About article 379 I can quite appreciate the objection of my honourable Friend Mr. Sharma. He objects to the words principally "Dominion of India". I tried yesterday with the help of Mr Mukerjee, the Chief Draftsman, my hand to redraft the article with the object of eliminating those words 'Dominion of India'. But I confess that I failed. I would therefore request Mr. Sharma to allow the article to stand as it is. It is unfortunate, but there is not remedy to it that I can see within the short time that was left to us.

Now coming to article 391, the position is this: The Constitution contains two sets of provisions for the creation of new provinces. Provinces can be created after the commencement of the Constitution. New Provinces can be created between 26th November and 26th January. With regard to the creation of Provinces after the commencement of the Constitution, the articles that would become operative are articles 3 and 4. They give power to Parliament to make such changes in the existing boundaries of the provinces in order to create new Provinces. Those articles are so clear that I do not think any further commentary from me is necessary.

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With regard to the creation of new Provinces between now and the 26th of January, the article that would be operative would be section 290 of the Government of India Act of 1935 and article 391 of the present Constitution. Sir, article 391 says that if between now and the 26th of January the authority empowered to take action under the Government of India Act, 1935 does take action, then the President, under article 391 is empowered to give effect to that order made under the Government of India Act Section 290. 'Notwithstanding the fact'—this is an important thing—"notwithstanding the fact that on the 25th January the Government of India Act, 1935, would stand repealed', the action would stand. The President is empowered under article 391 to carry over that action taken under the Government of India Act, 1935 and to give effect to it by an order amending the First Schedule and consequentially the Fourth Schedule which deals with representation in the Council of States.

An Honourable Member : He can only act after 26th January.

An Honourable Member : He can only act after 26th January.

The Honourable Dr. B. R. Ambedkar : He can act at any time. The Constituent Assembly will not be able to take notice of it, because it will not be in existence for this purpose after the 26th November. The point is this that the Government of India Act, 1935 will continue in operation after the 25th November, So long as that Act continues, the Governor-General's right to act under it also continues. He may take action at any time that lie likes.

My friend Mr. Sidhwa raised one question, namely that any action that may be taken between now and the 25th January should be subject to the scrutiny of Parliament. I think what he intends is that it should not be merely the act of the executive. My friend Mr. Sidhwa will remember that our Constitution will come into operation on the 26th of January. Till the 25th of January, the Constitution which will be operative in India will be the Constitution embodied in the Government of India Act, 1935, as adapted on 15th August 1947. Therefore, between now and the 25th of January, the Constitution is not the Constitution that we shall be passing, but the Constitution embodied in the Government of India Act 1935. Therefore in replying to his question whether the Parliament should have the right or the Indian legislature should have the right to be consulted in this matter, must be determined by the terms contained in section 290 of the Government of India Act, 1935.

If my friend Mr. Sidhwa were to turn to section 290 of the Government of India Act, he will see that the Governor-General is not required to ascertain the views of the Provincial legislature nor is he required to ascertain the views of the Indian Legislature. All that lie is required to do is to ascertain the views of the Government of any Province affected by the order. Therefore, so far as the operation of section 290 is concerned—and it is the only section which can be invoked so far as any action with regard to reconstitution of provinces between now and the 25th January is concerned—this has placed both the Provincial Legislature and the Indian Legislature outside the purview of any consultation that the Governor-General may make for acting under section 290. Therfore with the best wishes in the world it is not possible to carry out the wishes of my friend Mr. Sidhwa. He must therefore remain content with such provisions as we have got under section 290. Sir, I do not think any other article calls for a reply. I would therefore close with the hope that the House will be in a position to accept the amendments proposed by the Drafting Committee. (*Cheers*)

Mr. President : I will now put the amendments one by one to vote. Members have noticed that there are many amendments which arise on some amendment or other of the Drafting Committee. It may be that some of the amendments which have been moved by members may be acceptable to the Drafting Committee and it may be that some Members are willing to withdraw the amendments which they have moved.

Shri T. T. Krishnamachari : May I mention the amendments which we are prepared to accept ?

Mr. President : I was just coming to that. If an indication is given on behalf of the Drafting Committee as to which of the amendments are acceptable to them, we can avoid putting them to the vote, and, if on the other hand, private Members are also able to express as to which of the amendments they would not like to press, we would leave them alone, so that the number of amendments which will have to be put to the vote may be reduced.

Shri T. T. Krishnamachari : Mr. President, Sir, honourable Members of this House will please note that some of the amendments suggested by the Drafting Committee which appear in Lists IV, V, VI and VII, are the result of the discussions with some of the Members who moved amendments which find a place in List I and as a result of the compromise which has been arrived at between them and the Drafting Committee some of these amendments have been moved which, we think, the House will accept. The honourable Members who have moved the original amendments which find a place in List I will, I think, not persist in putting forward these amendments but withdraw them in view of the action taker, by the Drafting Committee by introducing fresh amendments to suit the purpose they had in mind. Barring these amendments, there are a few amendments which we will accept and which find a place in List 1. All these amendments happen to be in the name of my honourable Friend, Mr. H. V. Kamath. They are amendments No. 329 to article 164 for changing the name from "Koshal Vidarbh" to "Madhya Pradesh", the first alternative in the two amendments Nos. 394 and 395 to article 320. The Drafting Committee had an amendment to similar effect, but in view of the fact that my honourable Friend has moved this amendment, we are wining to accept it—amendment No. 418 to article 379, and amendment No. 431 to the First Schedule which is a consequence of the acceptance of amendment No. 329. *viz*., change of name from "Koshal Vidarbh" to "Madhya Pradesh". These amendments we are willing to accept. So far as the other amendments are concerned, the more important ones among them have been accepted by the Drafting Committee themselves tabling amendments to suit the purpose that honourable Members had in mind when they tabled those amendments because we found that the amendments had to be put in a different form to suit legal technicalities. I do hope that honourable Members will help the House by not pressing their amendments.

Shri H. V. Kamath : What about my amendment to article 41 which I discussed with my honourable Friend and which he was willing to accept ?

Mr. President : We shall take it up when we come to that.

Shri T. T. Krichnamachari : I may mention, Sir, that he did mention to me that the words in article 41 should be "State assistance" instead of"public assistance". If the amendment is tabled, you may kindly permit the amendment being moved. I have no objection to the amendment as such but I see that no amendment has been tabled.

Shri H. V. Kamath : My amendment is there, No. 138* in List I.

Shri T. T. Krishnamachari : I will accept that.

Mr. President : You mentioned that this morning. I will now take up my amendments as they have been moved. First, amendment No. 6 by Mr. Kamath.

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*138. That in article 41, for the words 'public assistance' the words 'State assistance' be substituted.

Shri B. Das : Sir, you need not read the amendments in List I. We all agree that all our amendments can be withdrawn, because the Drafting Committee have introduced the very amendments in another form. Take for instance my amendment No. 313. It is covered by No. 618. There is no need for your reading out the amendments. We will take it that all the amendments in List I stand withdrawn.

Mr. President : There are other amendments which honourable Members may not like to withdraw. I think I had better put all the amendments to the vote. The question is:

"That in clause (1) of article 1, after the words 'that is' a comma be inserted and the comma after the word 'Bharat' be deleted."

The amendment was negatived.

Mr. President : The question is:

"That in sub-clause (a) of clause (3) of article 13

(i) after the word 'having' the words 'the force of law' be inserted;

(ii) after the word 'India' the words 'or any part thereof' be inserted; and

(iii) the words 'the force of law' be deleted."

The amendment was negatived.

Mr. President : If I leave out any amendment by mistake, honourable Members will draw my attention to it. Amendment No. 83 to article 22 which has been considerably altered.

Mr. Naziruddin Ahmad : I would like to have leave to withdraw it.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is:

"That article 34 be deleted."

The amendment was negatived.

Mr. President : There are some other amendments to this article, No. 122.

Shri H. V. Kamath : I withdraw Nos. 122 and 123 but not 124.

Amendment Nos. 122 and 123 were, by leave of the Assembly, withdrawn.

Mr. President : The question is:

"That in article 34, for the words 'done under martial law' the words 'done by such person under martial law' be substituted."

The amendment was negatived.

Shri H. V. Kamath : What about my amendment No. 138 to which I referred just now?

Mr. President : Yes. The question is:

'That in, article 41, for the words 'public assistance' the words 'State assistance' be substituted".

The amendment was negatived.

Mr. President : We then go to article 48.

Prof. Shibban Lal Saksena : I beg to withdraw my amendment No. 141.

The amendment was, by leave of the Assembly, withdrawn.

Pandit Thakur Das Bhargava : I beg to withdraw all my amendments (142 and 144) relating to article 48.

The amendments were, by leave of the Assembly, withdrawn.